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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,963	12/31/2003	David C. Hastings	5024-00009	9670
7590 09/13/2007				
Joseph D. Kuborn ANDRUS, SCEALES, STARKE & SAWALL Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202			EXAMINER HELLER, TAMMIE K	
			ART UNIT 3766	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/749,963

Applicant(s)

HASTINGS, DAVID C.

Examiner

Tammie Heller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The amendment filed on July 10, 2007 has been received and considered. By this amendment, claim 1 has been amended and claims 1-19 are now pending in the application.

### ***Response to Arguments***

2. Applicant's arguments filed July 10, 2007 have been fully considered but they are not persuasive. Applicant argues that Dempsey fails to disclose each and every aspect of the currently filed independent claim 1. Specifically, Applicant argues that the identification device of Dempsey receives input data via the transceiver coupled to the processor. The Examiner respectfully disagrees and apologizes for any confusion generated by the "Response to Arguments" section of the previous Office Action of May 17, 2007. Figure 4 of Dempsey shows the processor 400 coupled to a transceiver 404. Additionally, Figure 4 shows a number of input devices such as keyboard 426 and touchscreen 300E which the Examiner considers to be identification devices coupled to the processor 400. It can be seen from Figure 4 that information received from the identification devices of Dempsey is not received via the transceiver, but rather directly from the identification devices. Again, the Examiner apologizes for any confusion produced by the previous Office Action.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities: at line 11, the phrase "the input data" is somewhat indefinite as it is not known if "the input data" to which the claim refers is the data received from a plurality of information sources or

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some other input data. Herein, the Examiner is considering this limitation to refer to the data received from a plurality of information sources. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 4-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dempsey. Regarding claim 1, Dempsey discloses a system for monitoring a physiological condition of a patient that includes a portable electronic device 100 including a processing circuit 400 and a number of identification devices, such as keyboard 426 and touchscreen 300E that may input data representative of an identity of a subject of interest (see Figures 3 and 4). Further, Dempsey discloses at col. 9, ln. 31-42, that a number of devices may be connected to the processor in order to input data.

6. Regarding claim 2, Dempsey discloses that the identification device may be a barcode scanner (see col. 9, ln. 41-43).

7. Regarding claim 4, it can be seen from Figure 3 of Dempsey that the identification device is configured to input data representative of an identity of the user.

8. Regarding claim 5, Dempsey discloses that the functions of the portable electronic device are adjusted based on the identity of the user (see Abstract).

9. Regarding claim 6, Dempsey discloses that the display is customized based on the identity of the user (see Abstract).

10. Regarding claim 7, Dempsey discloses that the notification messages received by the portable electronic device are determined based on the identity of the user input (see claim 1).

11. Regarding claim 8, Dempsey discloses that the information received from the identification device may be used to adjust a number of features of the electronic device (see Abstract and claim 1).

12. Regarding claim 9, Dempsey discloses that the device includes an audio signal input device 310, an audio signal output device 312 and a wireless transceiver 112 (see Figure 3).

13. Regarding claim 10, it can be seen from Figures 6-9 of Dempsey that the processing circuit may implement organizer programs.

14. Regarding claim 11, Dempsey discloses communicating via a cellular data transfer protocol (see col. 3, ln. 58-67).

15. Regarding claim 12, it can be seen from Figures 6-9 of Dempsey that the processing circuit may implement organizer programs.

16. Regarding claims 13 and 14, it can be seen from Figure 7 that the organizer program includes a task list function.

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17. Regarding claims 15 and 16, Dempsey discloses that the notification message includes physiologic data, specifically an electrocardiogram waveform, acquired from the patient (see col. 8, ln. 4).

18. Regarding claim 17, it can be seen from Figures 1-3 that the invention of Dempsey includes a rugged housing.

19. Regarding claim 18, Dempsey discloses that the housing may be for example, six inches tall, four inches wide, and one-half inch deep (see col. 7, ln. 22-23). Therefore, the housing of Dempsey is disclosed to have a volume of no more than 35 cubic inches.

20. Regarding claim 19, as the device of Dempsey is designed and configured to be utilized within the setting of a hospital, the Examiner takes the position that it is inherent that the housing be configured to be free of bacterial growth in order to maintain the sanitary conditions necessary within a hospital setting.

21. Claims 1-14, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bui et al. (U.S. 2003/0140928), herein Bui. Regarding claim 1, Bui discloses a medical treatment verification method and system that includes a processing circuit 202 having a transceiver 208 configured to receive notification messages from a medical monitoring system and an identification device 206 coupled to the processing circuit configured to receive data from a plurality of information sources (see Figure 2 and paragraph 31).

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22. Regarding claims 2 and 3, Bui discloses that the identification may be a bar code scanner or a radio frequency identification circuit (see paragraphs 22 and 31).

23. Regarding claims 4 and 5, Bui discloses that the identification device is used to identify the user and adjust the portable electronic device based on this identity (see paragraph 22).

24. Regarding claims 6, 7, and 8, Bui discloses that the display and notification messages are customized based on the identity of the user (see paragraph 59).

25. Regarding claim 9, Bui discloses that the I/O device 206 depicted in Figure 2 may be any of a number of devices, including a telephonic interface (see paragraph 31). The Examiner takes the position that a telephonic interface would inherently include an input audio device connected to an output audio device via a transceiver.

26. Regarding claims 10 and 12, Bui discloses implementing organizer programs (see paragraph 104 and Figure 3).

27. Regarding claim 11, Bui discloses that the transceiver may use a number of transfer protocols, including cellular data transfer (see paragraph 18).

28. Regarding claims 13 and 14, it can be seen from Figures 4-7 of Bui that a list of tasks must be traversed in order for the protocol to be completed.

29. Regarding claim 17, it can be seen from Figure 1 that the invention of Bui includes a rugged housing.

30. Regarding claim 19, as the device of Bui is designed and configured to be utilized within the setting of a hospital, the Examiner takes the position that it is inherent

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that the housing be configured to be free of bacterial growth in order to maintain the sanitary conditions necessary within a hospital setting.

### ***Conclusion***

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gombrich et al. (U.S. Patent No. 4,857,716) and Markis et al. (U.S. 2002/0147390).

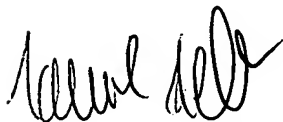
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammie Heller whose telephone number is 571-272-1986. The examiner can normally be reached on Monday through Friday from 7am until 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

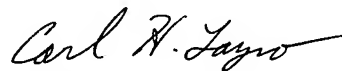


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Tammie K. Heller  
Patent Examiner  
Art Unit 3766



CARL LAYNO  
PRIMARY EXAMINER